



## International Covenant on Civil and Political Rights

Distr.: General  
6 May 2021

Original: English

### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2679/2015\*, \*\*

<i>Communication submitted by:</i>	Yuriy Rubtsov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	21 March 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 17 November 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Administrative detention for author's failure to comply with police orders
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	2 (2) and (3) and 19
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Yuriy Rubtsov, a national of Belarus born in 1961. He claims to be a victim of a violation by Belarus of his rights under article 19 of the Covenant, read in conjunction with article 2 (2) and (3). The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented.

#### Facts as submitted by the author

2.1 On 3 November 2013, the author took part in a street rally on the occasion of the day of remembrance of deceased relatives. Annually on this day, representatives of opposition parties in Belarus organize rallies to commemorate the victims of mass killings in the town of Kurapaty. The author participated in such a rally, wearing over his jacket a T-shirt bearing

\* Adopted by the Committee at its 131st session (1–26 March 2021).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



slogans of a political nature.<sup>1</sup> He was approached by police officers several times, who asked him to take off the T-shirt, but he refused to comply. At the end of the event, the author was apprehended by police officers and taken to a police station. He was detained and a police report was filed against him, charging him with a violation of article 23.4 of the Code of Administrative Offences – failure to comply with a lawful order of the police.

2.2 On 4 November 2013, the author was brought before the Soviet District Court in Minsk. The Court established that two police officers in plain clothes had approached the author during the rally and requested him to take off his T-shirt, stating that its content had been made public and might lead to negative consequences. The author had refused to remove the shirt and continued to participate in the event. Police officers had approached the author after the rally, presented their police identification badges and asked him to follow them to the police station in order to establish whether the slogans on the T-shirt would constitute an insult to the current President, and whether there were elements of an administrative offence in his actions. The Court noted that the author had refused to get into the police vehicle, demonstrating resistance. When police officers had warned him that they would use physical force, the author had obeyed and got into the vehicle. The Court assessed witness testimonies, the record of the administrative detention, and all elements of the author's actions and found him guilty of breaching article 23.4 of the Code of Administrative Offences, and sentenced him to three days of administrative detention.

2.3 On 7 November 2013, the author appealed the decision before Minsk City Court, stating that the District Court had erred by not conducting a proper assessment of the fact that he had been detained by police officers due to his refusal to remove a T-shirt bearing political messages and that the officers had therefore violated his right to freedom of expression as protected by the Constitution and the Covenant. The author also stated that the decision of the District Court had been based only on the testimony of the two arresting officers.

2.4 On 29 November 2013, the Minsk City Court rejected the appeal, confirming that the first-instance court had correctly assessed the evidence and that the sanction imposed was lawful.

2.5 The author submitted, through the supervisory review procedure, appeals to the Chair of Minsk City Court and the Chair of the Supreme Court of Belarus on 14 December 2013 and 22 January 2014, respectively. On 17 January 2014 and 13 March 2014, respectively, the appeals were dismissed. The author submits that he has thus exhausted all domestic remedies.

2.6 The author did not pursue the supervisory review procedure with the Prosecutor General's Office. He argues that, according to the Committee's jurisprudence, such a review is not considered as an effective remedy, thus he has exhausted all domestic remedies.

### **Complaint**

3.1 The author claims that the domestic courts failed to establish why the request of the police officers to remove the T-shirt with political slogans on it was lawful, and to explain why such a request was necessary to achieve one of the purposes listed in article 19 of the Covenant. He claims that his right to express his opinion by wearing a T-shirt, as protected under article 19, read in conjunction with article 2 (2) and (3), was violated.

3.2 The author asks the Committee to find a violation by Belarus of article 19, read in conjunction with article 2 (2) and (3), and to emphasize to the State party the need to bring article 23.4 of the Code of Administrative Offences into line with the requirements of article 19 of the Covenant.

### **State party's observations on admissibility**

4.1 By note verbale of 18 January 2016, the State party notes that on 4 November 2013, the Soviet District Court in Minsk found the author guilty of violating article 23.4 of the Code

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<sup>1</sup> The slogans read: "Lukashenko – leave!" and 'Four times a President? No! It is not a President, but a self-proclaimed tsar!' (Unofficial translation.)

of Administrative Offences and imposed on him a three-day administrative detention for non-compliance with a lawful police order.

4.2 The State party submits that the author's failure to comply with a lawful police order constituted an offence against the public order, which should not be committed while exercising the right to freedom of expression under article 19 of the Covenant.

4.3 The legality and relevance of the decision was assessed by Minsk City Court, and was confirmed by that Court on 29 November 2013 when it rejected the author's appeal. On 17 January 2014 and 13 March 2014, respectively, the Chair of Minsk City Court and the Chair of the Supreme Court dismissed the author's further appeals.

4.4 Thus, the State party submits, the author's right to a fair and public hearing by a competent, independent and impartial tribunal established by law was fully guaranteed, as enshrined in article 14 of the Covenant.

4.5 The State party submits that the author did not exhaust all available domestic remedies, and disagrees with his argument that the supervisory review procedure under the Prosecutor General's Office does not constitute an effective remedy. In this context, the State party notes that in one nine-month period in 2015, of 2,963 appeals that had been lodged under the supervisory review procedure, 2,910 had been upheld.

#### **Author's comments on the State party's observations**

5.1 In a submission dated 7 February 2016, referring to the State party's observation that his right to freedom of expression had not been restricted, the author draws the Committee's attention to the fact that the President of Belarus, Alexander Lukashenko, had said that he would leave the post when the people of Belarus asked him to do so. In that context, the author had decided to publicly ask the President to leave his post, and he therefore had written a relevant text on his T-shirt. He submits that during the rally, he was approached by police officers several times, who asked him to remove the shirt, and notes that the police orders were in violation of his right to freedom of expression. The author submits that his detention and administrative arrest were thus due to his publicly expressed opinion in relation to a statement by the President. He concludes that he was detained at a bus stop after the rally, still wearing his T-shirt.

5.2 Regarding the State party's statistics in relation to the number of cases reviewed under the supervisory review procedure, the author believes that this argument is groundless, since the State party failed to demonstrate how many of those cases involved article 23.4 of the Code of Administrative Offences, that is, failure to comply with a lawful order of the police.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the State party's argument that the author has failed to exhaust all domestic remedies as he failed to submit an appeal to the Prosecutor General under the supervisory review procedure. In this context, the Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, dependent on the discretionary power of the prosecutor, and thus does not constitute an effective remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional

Protocol.<sup>2</sup> In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee takes note of the author's claim that the State party violated his rights under article 19 of the Covenant, read in conjunction with article 2 (2). The Committee reiterates that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.<sup>3</sup> The Committee notes, however, that the author's claims already raise issues under article 19, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider examination of whether the State party has also violated its general obligations under article 2 (2) of the Covenant, read in conjunction with article 19, to be distinct from examination of the violation of the author's rights under article 19 of the Covenant. The Committee therefore considers that the author's claim in that regard is incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.5 The Committee further notes the author's claims under article 19 of the Covenant, read in conjunction with article 2 (3). In the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate his claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes that the author's claims as submitted raise issues under article 19 (2) of the Covenant, considers these claims sufficiently substantiated for the purposes of admissibility, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's claims that he was detained after the rally because he refused to follow the police orders and remove his T-shirt, which bore political slogans addressed to the President. The Committee notes, based on the court decisions, that the author refused to remove his T-shirt and resisted going to the police station in order to establish whether the inscriptions written on the shirt constituted an insult, and whether his actions constituted an administrative offence. The Committee takes note of the author's claim that the domestic courts failed to establish why the request of the police to remove his T-shirt was lawful and to explain whether the request was necessary to achieve the purposes of article 19 of the Covenant. The issue before the Committee therefore is to consider whether the State party, by detaining and subsequently sentencing the author to three days of administrative detention, has unjustifiably restricted the author's rights as guaranteed in article 19 of the Covenant.

7.3 The Committee recalls its general comment No. 34 (2011), in which it states, *inter alia*, that those freedoms are indispensable conditions for the full development of the person, are essential for any society and constitute the foundation stone for every free and democratic society.<sup>4</sup> It notes that article 19 (3) of the Covenant allows for certain restrictions, but only as provided by law and necessary for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals. It observes that any restriction on the exercise of the rights provided for in article 19 (2) must not be

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<sup>2</sup> See, for example, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 9.3.

<sup>3</sup> *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

<sup>4</sup> General comment No. 34 (2011), para. 2.

overbroad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest being protected,<sup>5</sup> conform to the strict tests of necessity and proportionality and be directly related to the specific need on which it is predicated.<sup>6</sup> The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.<sup>7</sup> When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat to any of the enumerated grounds listed in article 19 (3) that has caused it to restrict freedom of expression, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>8</sup>

7.4 The Committee notes the State party's argument that the author was arrested because he did not comply with a lawful police order, in violation of article 23.4 of the Code of Administrative Offences, and that his administrative sentence was handed down in accordance with domestic law. The Committee also notes that the author alleges that he was detained because he was trying to exercise his right to freedom of expression during the rally and thus he refused to comply with the police order to remove his T-shirt. The Committee observes that the detention and sentencing of the author resulted in a restriction of his freedom to express an opinion. In that connection, the Committee recalls that it is for the State party to demonstrate that the restriction imposed was necessary in the case in question for one of the legitimate purposes listed in article 19 (3) of the Covenant.<sup>9</sup> The Committee observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value that the restriction serves to protect.<sup>10</sup> The Committee observes that, while the State party appears to imply that the author's failure to comply with a lawful police order constituted an offence against public order, it has not provided a justification as to why it was necessary and proportionate to sentence the author to three days of administrative detention. Even accepting that his detention and arrest had a basis in domestic law, and that his conviction pursued a legitimate aim, such as protecting public order, in the Committee's view nothing indicates that the restrictions in question were necessary and proportionate to achieve that aim.

7.5 In the circumstances described above, and in the absence of any other pertinent information from the State party to justify the restriction for the purposes listed in article 19 (3), the Committee concludes that the author's rights under article 19 (2) of the Covenant were violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 19 (2) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when

<sup>5</sup> *Ibid.*, para. 34.

<sup>6</sup> *Ibid.*, para. 22. See also, for example, *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 7.7.

<sup>7</sup> General comment No. 34 (2011), para. 34.

<sup>8</sup> *Ibid.*, paras. 35–36.

<sup>9</sup> See, for example, *Turchenyak et al. v. Belarus*, para. 7.8.

<sup>10</sup> *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.8.

it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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